

Application No.: 09/396,523

Docket No.: 22116-00005-US3

REMARKS

Claims 3, 33-45, 47, 48 and 53 are now in the application.

The provisional rejection of claims 3, 33-45, 47, 48 and 53 under the judicially created doctrine of obviousness type double patenting as being unpatentable over application 09/713,512 has been overcome by filing of the attached Terminal Disclaimer. The filing of the Terminal Disclaimer is not to be construed as an admission, estoppel or acquiescence. See *Quad Environmental Technology v. Union Sanitary District*, 20 USPQ2d 1392 (Fed. Cir. 1991) and *Ortho Pharmaceuticals Corp. v. Smith*, 22 USPQ2d 1119 (Fed. Cir. 1992).

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Please charge any additional fees that may be due to our Deposit Account No. 22-0185, or credit any overpayment to our Deposit Account No. 22-0185 under Order No. 22116-00005-US3 from which the undersigned is authorized to draw.

Dated: 5-18-05

Respectfully submitted,

By 

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